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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/780,824

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Edward G. Tiedemann JR.

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EXAMINER

RIZK, SAMIR WADIE

ART UNIT

PAPER NUMBER

2112

NOTIFICATION DATE

DELIVERY MODE

09/18/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/780,824	Applicant(s) TIEDEMANN ET AL.	
	Examiner Sam Rizk	Art Unit 2112	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 40-79 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 40-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

- Response to the applicant's amendment dated 6/23/2008
- Claims 24-39 have been Cancelled
- Claims 1-23 and 40-79 have been submitted for examination
- Claims 1-23 and 40-79 have been rejected

Claims Objections

1. In view of the applicant's arguments, see page 14, filed on 6/23/2008, all objections to the drawings are withdrawn.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 23 is rejected under 35 U.S.C. 101 because the claim invention is directed to non-statutory subject matter.

For Example, each limitation in the method claim 1 is pure a mental step or act, i.e. generating a first signal and conditionally generating a second signal for rate control method. Rate control what? To qualify under section 101 statutory process, the claim should positively recite the other statutory class (**the thing or product**) to which is tied. See MPEP section 2106.IV.B.

Response to Arguments

3. Applicant's arguments filed on 6/23/2008 have been fully considered but they are not persuasive.

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4. The Examiner disagrees with the Applicant contentions in page 15, lines (9-12) that Dantu (US patent no. 6904286) does not teach “no second message taught that is generated conditioned on the rate control indicator, as recited in claim 1. Dantu (col. 5, lines 15-30) teaches **the acknowledgment shapers 88 receive rate control messages** 110 from the mobile device 36 through the MAS 86. The rate control messages 110 are feedback messages generated by the mobile device 36 or other suitable end point and provided to the source end point for adjustment of transmission rate. The Dantu (col. 8, lines 50-65) goes on to teach Proceeding to decisional step 236, **if additional traffic remains to be transmitted for the flow (second, third, ... messages),** the Yes branch leads to step 238 in which the source **adjusts its packet transmission rate based on the shaped acknowledgment messages received back over the communication** system 10.
5. In regard to the Applicant arguments with respect to how Dantu's teaches as the “rate control indicator” and “rate control command”. Well, Dantu's "rate control message" is equivalent to “rate control indicator” in the instant application, and “acknowledgment shapers” (ref. 88 in figure 2) is equivalent to the “rate control command” in the instant application.
6. The Examiner disagrees with the applicant and maintains the rejection of claims (1-23) and (40-63) as in the office action mailed on 12/26/2007. All the amendments and arguments have been considered. It is the Examiner's conclusion that claims (1-23) and (40-63) is not patentably distinct or non-

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obvious over the prior art of record in view of the reference, Dantu. Therefore the rejection is maintained.

7. Updated rejection of the office action mailed on 12/26/2009 follows.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-23 and 40-79 are rejected under 35 U.S.C. 102(e) as being anticipated by Dantu US patent no. 6904286 (Hereinafter Dantu).

9. In regard to claim 1, Dantu teaches:

(Original) An apparatus, comprising:

a message generator for:

generating a first message comprising an acknowledgment-indicator

and a rate control indicator; and

(Note col. 5, lines (16-18) in Dantu)

generating a second message conditioned on the rate control indicator.

(Note col. 5, lines (18-32) in Dantu)

10. In regard to claim 2, Dantu teaches:

The apparatus of claim 1, wherein the second message

comprises a rate control command.

(Note; ref. 88 in figure 2 and col. 5, line (21) in Dantu)

11. In regard to claim 3, Dantu teaches:

The apparatus of claim 2, wherein the rate control command is one of a plurality of values, wherein one or more of the plurality of values indicates a rate increase.

(Note: FIG. 5 in Dantu)

12. In regard to claim 4, Dantu teaches:

The apparatus of claim 2, wherein the rate control command is one of a plurality of values, wherein one or more of the plurality of values indicates a rate decrease.

(Note: FIG. 5 in Dantu)

In regard to claim 5, Dantu teaches:

The apparatus of claim 2, wherein the rate control command is one of a plurality of values, wherein one or more of the plurality of values indicates rate hold

(Note: FIG. 5 in Dantu)

13. Claims 6, 7, 10 and 19-22 are rejected for the same reasons as per claim 1.

14. In regard to claim 23, Dantu teaches:

- (Original) A method for rate control, comprising:
- generating a first signal comprising one of a first plurality of values, each value associated with an acknowledgment (ACK) or negative acknowledgment (NAK), and one or more of the values indicating a rate control command; and

(Note col. 5, lines (16-18) "Acknowledge Shaper" in Dantu)

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- conditionally generating a second signal comprising one of a second plurality of values corresponding to a respective plurality of rate control commands when the value of the first signal indicates a rate control command.

(Note col. 5, lines (18-32) in Dantu)

15. Claims 40, 41 and 54-64 are rejected for the same reasons as per 23.

16. In regard to claim 8, Dantu teaches:

The apparatus of claim 6, wherein the receiver is further operable to receive one or more transmission requests and one or more autonomous transmissions, the apparatus further comprising a scheduler for allocating a shared resource in response to the one or more transmission requests and the one or more autonomous transmissions.

(Note col. 5, lines (16-32) in Dantu)

17. In regard to claim 11, Dantu teaches:

The apparatus of claim 10, wherein the first signal comprises an acknowledgement.

(Note: FIG. 4, reference character (192) in Dantu)

18. In regard to claim 12, Dantu teaches:

The apparatus of claim 10, wherein the second signal comprises a rate control command.

(Note: FIG. 3 in Dantu)

19. Claims 13, 46, 49 and 69 are rejected for the same reasons as per 3.

20. Claims 14, 47, 50 and 70 are rejected for the same reasons as per 4.

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21. Claims 15, 48, 51, 71 and 72 are rejected for the same reasons as per 5.

22. In regard to claim 16, Dantu teaches:

The apparatus of claim 10, further comprising a transmitter for transmitting a packet.

(Note: FIG. 1 in Dantu)

23. In regard to claim 17, Dantu teaches:

The apparatus of claim 16, wherein the transmitter retransmits the packet when the first signal indicates the transmitted packet is not acknowledged.

(Note: FIG. 4 in Dantu)

24. In regard to claim 18, Dantu teaches:

The apparatus of claim 16, wherein the second signal comprises a rate control command and the transmitter transmits a second packet at a rate determined in accordance with a rate control command.

(Note: FIG. 4 in Dantu)

25. In regard to claim 42, Dantu teaches:

The method of claim 41, wherein the first signal comprises one of a first plurality of values, one of the first plurality of values indicating an acknowledgment of correct decoding and no rate control command.-

(Note: FIG. 3 in Dantu)

26. In regard to claim 43, Dantu teaches:

The method of claim 42, wherein the value indicating an acknowledgment of

correct decoding and no rate control command revokes a prior grant.

(Note: FIG. 3 in Dantu)

27. In regard to claim 44, Dantu teaches:

The method of claim 41, wherein the first signal comprises one of a first plurality of values, one of the first plurality of values indicating an acknowledgment of correct decoding and a rate control command.

(Note: FIG. 3 in Dantu)

28. In regard to claim 45, Dantu teaches:

The method of claim 41, wherein the first signal comprises a value indicating no transmission corresponding to a negative acknowledgment of the decoded packet and no rate control command.

(Note: FIG. 3 in Dantu)

29. Claim 65 is rejected for the same reasons as per claim 42.

30. Claim 66 is rejected for the same reasons as per claim 43.

31. Claim 67 is rejected for the same reasons as per claim 44.

32. Claim 68 is rejected for the same reasons as per claim 45.

33. Claims 73 and 76 are rejected for the same reasons as per claim 20.

34. Claims 74 and 77 are rejected for the same reasons as per claim 51.

35. Claim 75 is rejected for the same reasons as per claim 52.

36. Claims 52, 53, 78 and 79 are rejected for the same reasons as per claim 2.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Rizk whose telephone number is (571) 272-8191. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacques Louis-Jacques can be reached on (571) 272-6962. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronics Business Center (EBC) at 866-217-9197 (toll-free)

/Sam Rizk/

Examiner, Art Unit 2112

/Mujtaba K Chaudry/

Primary Examiner, Art Unit 2112